

¹ K.S.A. 44-520.

Claimant did not have any difficulty performing her job duties for the first three months of work. In February 1999, however, she started having problems with back pain. She attributed this pain to her work with respondent as she first noticed it during her work activities and during a time when she was scheduled to work on a hall by herself.

She sought treatment on February 11, 1999 with Dr. Lee R. Dorey, an orthopedic surgeon, and was given work restrictions which she took to her employer. As a result, she was given lighter duty work initially, but when respondent was short of staff she was required to do CNA work as before. Claimant's condition worsened until her last day of work on April 29, 1999. Claimant was never asked to complete an accident report form. On the other hand, she did not initiate this process herself even though she had been instructed this was the respondent's policy. When she quit she did not inform respondent that she was leaving because she was physically unable to perform her job duties. She did, however, tell her supervisors that her work activities were causing her increased discomfort. Respondent suggests claimant needed to do more given her history of back problems and the fact that on one occasion when claimant was asked if she hurt herself on the job she said no.

Respondent contends claimant failed to provide timely notice of her accidental injury. K.S.A. 44-520 requires notice of accidental injury be given to the employer within 10 days. The time for giving notice can be extended up to 75 days for just cause. Just cause is not the issue here because after she left work it was not until July 29, 1999, over 75 days later, before claimant contacted respondent again about her injury by sending a letter requesting workers compensation benefits.

In another case, the Board said:

When dealing with injuries that are caused by overuse or repetitive micro-trauma, it can be difficult to determine the injury's cause. It is also often difficult to determine the injury's date of commencement and conclusion. In those situations, injured workers should not be held to absolute precision when considering the requirements of notice and written claim. The test should be whether the employer was placed on reasonable notice of a work-related injury.²

Respondent contends claimant knew that if she was injured she was to complete an accident report form. Respondent further argues that claimant never attributed her injury to her work and never gave notice. Claimant counters that she told her supervisor and, although she continued working, her supervisor knew she was attributing the pain to her work. Claimant's testimony is that she informed her supervisors that she thought her back pain was aggravated by lifting and bending at work. She had conversations with the

² Pope v. Overnite Transportation Company, WCAB Docket No. 237,559 (June 1999).

nursing home administrator, Jill Hames, the director of nursing, Londa Tipton, as well as Kellie Self, Monica Pulliam, Gail Taves and Roberta Rue.

These last four did not testify, but Ms. Hames and Ms. Tipton testified at the first preliminary hearing. Ms. Hames acknowledged that claimant was, at least in part, attributing her symptoms to her work activities.

Q. My client has testified and you've been present but she indicated that she had advised you that she was having back pain and that it was increased by the amount of lifting and bending she was doing as a CNA. Do you dispute her saying that to you?

A. No, she said that to me.

...

Q. And she told you she was in pain and that it was being made worse by the amount of lifting and bending she was required to do and the doctor had given her a slip to keep her from doing that, correct?

A. Right, and when she gave us a slip, we moved her.³

Ms. Tipton, respondent's director of nursing, agreed that these complaints were repeated to her.

Q. All right. Did Troi Reyes ever advise you that the lifting and bending while performing the work as a CNA was causing her discomfort in her back?

A. The only time that I heard anything that I can recall is the time when she brought in the slip from Dr. Dorey.

Q. All right, and at that time did she indicate that the bending and the lifting that she was doing as a CNA was causing her additional discomfort in her back?

A. She was saying it was causing her pain.⁴

Claimant's testimony is that she did not suffer a specific traumatic event, but that instead her condition progressively worsened until she was no longer able to perform her regular job and, although she attributed her condition to work, she was not sure whether she had suffered an accident under workers compensation. The Appeals Board finds

³ Transcript of December 9, 1999 Preliminary Hearing at 67-68.

⁴ Transcript of December 9, 1999 Preliminary Hearing at 85-86. But see also Transcript of January 6, 2000 Continuation of Preliminary Hearing at 26.

claimant's conversations with her supervisors satisfied the requirement to report her injury within 10 days.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the January 7, 2000 Order entered by Administrative Law Judge Bruce E. Moore should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of March 2000.

BOARD MEMBER

c: Scott J. Mann, Hutchinson, KS
William L. Townsley, Wichita, KS
Bruce E. Moore, Administrative Law Judge
Philip S. Harness, Director